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IN THE

Supreme Court of the United States

No. 71-46

DOLORES SUMMERLIN KELCHNER,

Petitioner,

v.

JOHN V. SUMMERLIN, JR., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals has not yet been officially reported.

JURISDICTION

The jurisdictional prerequisites are set forth in the petition.

QUESTION PRESENTED

Whether a child adopted thirteen (13) years after the execution of a will by, and twelve (12) years after the death of, the grandmother of her adopting father may be considered as his "issue," so as to be deemed an income beneficiary and remainderman of a trust created by the will?

STATEMENT

The respondents accept the statement of the case set out in the petition. A few additional facts, all of which are adverted to in the opinion of the Court of Appeals, do merit brief mention. These are: (1) The will in question was drafted by the principal trust officer of the Washington Loan & Trust Company, "a competent draftsman undoubtedly familiar with the estate law of the District of Columbia" as of the time the will was executed (March 1929) (6a);[1] (2) At the time it was executed, the word "issue," when used in a District of Columbia will, had been construed by the Court of Appeals for the District of Columbia *prima facie* to be a term of limitation equivalent to the technical expression "heirs of the body" (7a); (3) The same view of the meaning of "issue" was also accepted in most American jurisdictions at that time (7a); (4) When Congress changed the statutory or public policy respecting the inheritance rights of adopted children in the District of Columbia in 1954, including their right to take under the will of a collateral relative, it provided expressly that the amendments then enacted were to "have no retroactive effect" upon "rights and relations obtained by any decree of adoption entered prior to June 8, 1954" (17a).[2]

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[1] References to the appendix attached to the petition are identified herein as "(__a)."

[2] 16 D.C. Code 225 (1961), now 16 D.C. Code 315 (1967).

ARGUMENT

A panel of the Court of Appeals held, and the full Court *en banc* with one judge dissenting refused to rehear the question, that: a child adopted thirteen (13) years after the execution of the will of the testatrix, the grandmother of the child's adopting father, and twelve (12) years after her death (1930), at a time when the law and policy of the District of Columbia did not confer on an adopted child all the rights of a natural child, including any right to take "through its adopting parents" (which rights when subsequently conferred by Congress in 1954 were made expressly non-retroactive in effect), is not to be considered one of the "issue" of her adopting father entitled to share in the income and corpus of a trust established by the will. The court below found the evidence of the testatrix's intent not to include adopted children under the term "issue" by looking "within the four corners of the document, as illuminated by the circumstances, including the laws in effect at the time of the execution of the will and the death of the testatrix" (8a).

For a number of reasons the question which the petitioner presents is not one which warrants review by this Court. These are:

1. The issue is purely one of the common law of the District of Columbia, as modified by an Act of Congress applicable only in the District. This Court has stated: "We will not ordinarily review decisions of the United States Court of Appeals which are based upon statutes so limited or which declare the common law of the District." *Del Vecchio v. Bowers*, 296 U.S. 280, 285 (1935); *District of Columbia v. Pace*, 320 U.S. 698, 702 (1944). That is precisely the type of review which the petitioner urges the Court to undertake here.

2. Despite petitioner's attempt to argue otherwise, it is clear that the decision of the Court of Appeals in this case can have no national repercussions nor "an impact not confined to the Potomac's shores . . . ." *General Motors*

Corporation v. District of Columbia, 380 U.S. 553, 556 (1965). All the other jurisdictions of the Union remain free to pursue whatever public policy regarding the status of adopted children they choose.

3. Nor can it be maintained that the interpretation of a will which the Court of Appeals adopted in this case is a matter of great importance to the administration of the laws of the District of Columbia, a consideration which occasionally has moved this Court to review decisions of the Court of Appeals for the District of Columbia Circuit on a question primarily of local law. See, *e.g.*, *District of Columbia v. Thompson Co.*, 346 U.S. 100 (1953). The decision below applies only to wills executed *before* June 8, 1954, the date on which Congress changed the law governing the rights of adopted children in the District of Columbia. 16 D.C. Code 222 (1961), now 16 D.C. Code 312 (1967), and 16 D.C. Code 224, 225 (1961), now 16 D.C. Code 313, 315 (1967). Thus, even within the boundaries of the District of Columbia, the decision below will have very limited future application.

4. Since a matter of local law only is involved, the decision of which petitioner seeks review in this Court does not conflict with any prior decisions of this Court or of any other Circuit Courts of Appeal. The petitioner, however, claims that the decision is in conflict with *Johns v. Cobb*, 131 App. D.C. 85, 402 F.2d 636 (1968), *cert. den.*, 393 U.S. 1097 (1969). Despite petitioner's insinuations to the contrary, the Court of Appeals adequately distinguished between the two cases for the several reasons set forth in its opinion (12-13, 18-22a). Most notable of these is the fact that in *Johns* the adoption occurred *before* the execution of the wills there at issue, whereas here the adoption took place *long after* the death of the testatrix. We also point out that the losing party in *Johns v. Cobb* unsuccessfully sought *certiorari* from this Court, arguing in his petition that the decision of the Court of Appeals in *Johns* was

in conflict with earlier decisions of that same court.[3] This Court declined the invitation of the petitioner in *Johns v. Cobb, supra,* to involve itself in construing District of Columbia law concerning the inheritance rights of adopted children; it should likewise refuse the petitioner's request that it do that very thing in this case.

5. Finally, if ultimately it should appear that there may be possible contradiction or confusion in the law of the District of Columbia concerning the inheritance rights of children adopted prior to June 8, 1954, the court which now has been given the final responsibility for putting such matters to rest is the District of Columbia Court of Appeals. With non-applicable exceptions, the "highest court of the District of Columbia is the District of Columbia Court of Appeals." 11 D.C. Code 102 (1971). As a result of the enactment of the District of Columbia Court Reorganization Act of 1970,[4] the final judgments of the District of Columbia Court of Appeals are now reviewable in this Court. The Congressional purpose in elevating the status and expanding the jurisdiction of the District of Columbia Court of Appeals was clear. It was "to be the highest court of . . . [the District of Columbia], the final authority, as to purely local matters . . . ."[5] By this action, Congress raised that court to the jurisdictional status enjoyed by state courts of last resort throughout the Country. Accordingly, we respectfully urge that this Court—even should it entertain a doubt that the decision below was correct or that it might cause possible confusion in the administration of the

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[3]The cases relied on by the petitioner in *Johns v. Cobb* were: *Allen v. Reed,* 57 App. D.C. 78, 17 F.2d 666 (1927); *Shoemaker v. Newman,* 62 App. D.C. 120, 65 F.2d 208 (1933), *cert. den.*, 290 U.S. 72 (1934); and *Noreen v. Sparks,* 103 F. Supp. 588, 590 (D. D.C., 1952), *aff'd,* 92 App. D.C. 163, 204 F.2d 56 (1953).

[4]Public Law 91-358, July 29, 1970; 84 Stat. 475 (1970).

[5]Statement of the Managers, Conference Report on the President's Crime Legislation for the District of Columbia, Committee Print, July 15, 1970, p. 5; see also 38 D.C. Bar Journal 33, 36 (1971).

laws of the District—leave the ultimate disposition of such concerns to the District of Columbia Court of Appeals.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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